Before The
Federal Communications Commission
Washington, D.C. 20554

In The Matter of	)	
	)	
Re-examination of the	)	
Policy Statement on	)	**GC Docket No. 92-52**
Comparative Broadcast Hearings	)	

To: The Commission

REPLY COMMENTS

Maranatha Broadcasting Company, Inc. ("MBC"), submits these brief Reply Comments in response to the Comments filed by Breeze Broadcasting Company, Ltd. ("Breeze"), on July 22, 1994.

In this proceeding, the Commission seeks to determine a course of action in light of the invalidation of its "integration preference" in broadcast comparative cases in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993).

Breeze and MBC are two of three remaining applicants, in MM Docket No. 87-119, for a new FM broadcast station in Gulf Breeze, Florida. Breeze's Comments include several representations regarding its application which require qualification or rebuttal. In addition, Breeze's proposals for modification of the comparative process are aimed at enhancing Breeze's comparative position without affording due process to its competitors for the Gulf Breeze permit.

The Effect of Bechtel on the Gulf Breeze Proceeding

The underlying premise of Breeze's Comments is that Bechtel held only that the FCC had failed to justify its reliance on the integration factor by empirical data linking integration

to superior performance. Breeze offers anecdotal material about integrated owners. That argument seeks a train which has long since left the station. The Bechtel court examined five different asserted justifications for the integration preference and found each of them ineffective (financial incentive), "trivial" (legal accountability), counter-intuitive or counter-productive (interest), "implausible" (information) or unduly subjective (objectivity). In sum, the Court concluded, "the integration preference is peculiarly without foundation." 10 F.3d at 887.

In that light, Breeze's Comments, where they touch upon the merits of the Gulf Breeze proceeding (e.g., the "plain superiority of Breeze's proposal," Comments, p. 2), are especially hollow. With the removal of the integration preference, the comparative distinction between the only two remaining applicants not found to be disqualified lies only in the relative weight to be assigned to their respective other mass media interests.[1] The fact that MBC has not proposed "integration" (in the sense commonly understood prior to Bechtel) of its owners in the day-to-day management of its proposed Gulf Breeze station is now, legally, of no significance.

Moreover, Breeze's assertion (Comments, p. 2) that its ownership structure was not "some phony arrangement ginned up for the purpose of impressing the Commission," begs the question. The Review Board found, to the contrary, that Breeze's limited partnership agreement did not embody a meaningful distinction between "active" and "passive" partners and reduced Breeze's integration credit to only 50 percent. Breeze Broadcasting Co., 8 FCC

---

[1] It should be noted that the "diversification" factor suffers from some of the same deficiencies (e.g., lack of permanence, lack of supporting evidence) that the Court found were fatal to the integration preference.

Rcd. 1835, 1838-39 ¶¶ 16-20 (Rev. Bd. 1993). Although Breeze has appealed this aspect of the Review Board's decision, MBC has appealed the Board's award of any integration credit for a partnership which may be terminated by any partner at the end of any partnership year. While Bechtel has rendered this aspect of the appeals moot, the Breeze limited partnership structure exemplifies the impermance of the integration preference and its inevitable tendency toward "strange and unnatural" structures which caused the D.C. Circuit to find the Commission's reliance on the preference arbitrary and capricious. Bechtel, 10 F.3d at 886. The Breeze limited partnership is representative of the host of good reasons why the Commission should not attempt to breath new life into the integration preference in any form.

Standards to Be Applied Post Bechtel

Beyond Breeze's suggestions for retention of the integration preference in some form, its proposals for revising the criteria in comparative proceedings tend toward arbitrariness and caprice in the same manner as the integration preference. For example, Breeze suggests (Comments, p. 6) that the Commission should give increased credit for broadcast experience. If the Commission does afford increased credit for broadcast experience, it should do so in a manner which does not discriminate arbitrarily between classes of applicants. In the absence of an integration preference, increased credit for prior broadcast experience should attach to corporations as well as individual owner-operators. Corporations, through their officers and managers, are just as likely as owner-operators to have acquired, through successful ownership of other broadcast stations, the attributes necessary to provide broadcast service that is responsive to the public interest.

Breeze also urges (Comments, p. 7) that credit be given, not for local residence per se, but for "knowledge of the vicinity." Indeed, the Bechtel Court observed that "[f]amiliarity with a community seems much more likely than station visitors or correspondence to make one aware of community needs." 10 F.3d at 885. But, as the Commission has recognized in other contexts, there are many different but equally legitimate devices for demonstrating familiarity with local needs and interests. In The Matter of Deregulation of Radio, 84 F.C.C.2d 968 (1981) (abandonment of formal ascertainment of community needs in favor of licensee applicant devising means to ascertain needs).

Last, Breeze urges (Comments p. 7) that, in cases where the hearing record is closed, there should be no further proceedings, and no amendments should be allowed which "fundamentally change the nature of an applicant's proposal." There is much to be said for avoiding a proliferation of substantial amendments. And the Commission has rules, or could adopt rules, which effectively bar the filing of major amendments, or amendments which, if granted, would require the addition of new issues. However, it is axiomatic that an agency may not penalize an applicant based on standards of which the agency failed to provide notice. See Greater Boston Television Corp. v. FCC, 444 F.2d 841, 850 (D.C. Cir.), cert. denied, 403 U.S. 923 (1970). As for the comparison of mutually exclusive broadcast

applicants, when the new rules of the game are decided, the Commission has no lawful alternative but to reopen the record, permit applicants to conform their proposals to the new standards, and evaluate the applications accordingly.

Respectfully submitted,

MARANATHA BROADCASTING
COMPANY, INC.

By _____ DAVID HIXSON

Its SEC/TRES.

August 8, 1994